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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 GABRIEL CHAVEZ,

12 Plaintiff,

13 v.

14 D. JUDD,

15 Defendant.
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NO. EDCV 08-696-AHM (AGR)

ORDER TO SHOW CAUSE

18 For the reasons discussed below, the Court orders Plaintiff to show cause,
19 on or before ***April 24, 2009***, why this Court should not recommend dismissal of
20 the complaint for failure to prosecute.

21 I.

22 **BACKGROUND**

23 On August 11, 2008, Plaintiff, who at the time of filing was incarcerated at
24 Ironwood State Prison, filed a second amended complaint pursuant to 42 U.S.C.
25 § 1983. On December 5, 2008, Defendant filed a motion to dismiss ("MTD"). On
26 December 9, 2008, the Court advised Plaintiff he had until January 8, 2009, to file
27 an opposition. (Dkt. No. 17.) On January 27, 2009, after Plaintiff had not filed an
28 opposition, the Court issued a minute order giving Plaintiff until February 27,

1 2009, to file an opposition. (Dkt. No. 20.) The Court advised Plaintiff that failure
2 to file a timely opposition might result in dismissal of the action.

3 **II.**

4 **DISCUSSION**

5 A district court may on its own dismiss an action for failure to prosecute
6 pursuant to Fed. R. Civ. P. 41(b). *Henderson v. Duncan*, 779 F.2d 1241, 1243
7 (9th Cir. 1986). The court is "required to weigh several factors in determining
8 whether to dismiss this case for lack of prosecution: (1) the public's interest in
9 expeditious resolution of litigation; (2) the court's need to manage its docket; (3)
10 the risk of prejudice to the defendants; (4) the public policy favoring disposition of
11 cases on their merits and (5) the availability of less drastic sanctions." *Id.* "A
12 dismissal for lack of prosecution must be supported by a showing of
13 unreasonable delay. Unreasonable delay creates a presumption of injury to the
14 defense." *Id.* (internal citation omitted).

15 Since Defendant filed a motion to dismiss the Second Amended Complaint,
16 Plaintiff has not responded to the Court's orders. Given Plaintiff's failure to
17 respond, Plaintiff may no longer wish to pursue this action.

18 **III.**

19 **ORDER**

20 IT IS THEREFORE ORDERED that, on or before **April 24, 2009**, Plaintiff
21 shall show cause why this Court should not recommend dismissal of the action
22 for failure to prosecute. Plaintiff may comply with this order by taking one of three
23 actions: (1) filing an opposition to the motion to dismiss; (2) filing a notice that he
24 wishes to pursue this action; or (3) filing a notice that he does not wish to pursue
25 this action.

1 ***Plaintiff is cautioned that if he does not timely respond to this Order***
2 ***to Show Cause, the Magistrate Judge may recommend dismissal without***
3 ***prejudice for failure to prosecute and/or failure to follow a court order.***

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6 DATED: March 24, 2009



ALICIA G. ROSENBERG
United States Magistrate Judge